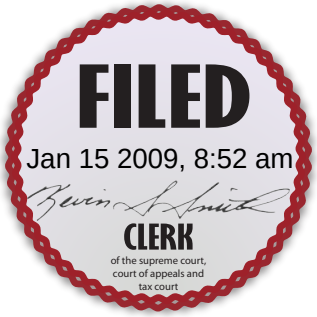

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IN THE
COURT OF APPEALS OF INDIANA

TODD ROSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0803-CR-207
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Amy Barbar, Magistrate
Cause No. 49G22-0708-FC-154862
49G22-0704-FC-066211

JANUARY 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Todd Ross appeals the revocation of his placement in Community Corrections. We affirm.

Ross raises two issues for our review, which we restate as:

I. Whether the State presented sufficient evidence to support revocation of Ross' Community Corrections placement.

II. Whether Ross was denied due process.

On September 6, 2007, Ross pled guilty to two counts of operating a motor vehicle after his license was forfeited for life (Class C felonies). In exchange for Ross' plea, the State recommended that he receive a six-year executed sentence with placement open to argument. Ross was ultimately sentenced to two terms of 1095 days each, with the terms to be served consecutively. The trial court ordered the sentences served through the Marion County Community Corrections program.

Ross entered the program, and on September 25, 2007, he took up residence at the Riverside Community Corrections Residential Center. On January 15, 2008, the State filed a notice of violation of community corrections rules alleging that on December 26, 2007, Ross tested positive for alcohol and that he was a habitual rules violator. With reference to the latter allegation, the notice stated that Ross had received three conduct violations for drinking alcohol. Appellant's App. at 82. The notice further stated that Ross was on a zero tolerance program because of the three positive alco-sensor tests. *Id.* at 80.

At the hearing on the January 15, 2008 notice of violation, the State presented evidence that Ross smelled like alcohol when he returned from work to the Riverside Residential Center on December 26, 2007. Correctional Officer Iris Brown administered an alco-sensor test, resulting in a positive reading of 0.33%. Officer Brown notified the Director of the violation. The State also presented evidence that Ross had previously tested positive for alcohol on October 2, 2007; October 10, 2007; and November 15, 2007. The State presented further evidence that the Riverside rules forbid a resident from entering the facility after ingesting alcoholic beverages. The rules defined alcohol use as a serious violation. The State alleged that the accumulation of rule violations concerning alcohol use gave Ross the status of a habitual conduct rules violator.

Based on the evidence presented at the hearing, the trial court found that Ross violated the terms of his community corrections placement. The trial court revoked Ross' placement and ordered him to serve his sentence at the Department of Correction. Ross now appeals.

I.

Ross contends that the State did not present sufficient evidence to establish that he had been given notice of Community Corrections rules and/or that he had broken the rules. Ross argues that the record is devoid of any evidence of the rules he was alleged to have violated. He further argues that the results of the alco-sensor machine were not admissible evidence because the machine's accuracy was not established.

Community corrections programs are alternatives to incarceration, and placement is at the sole discretion of the trial court. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999).

A defendant is not entitled to serve a sentence in a community corrections program. Rather, placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Id.* An appellate court applies the same standard of review to a trial court's ruling on a petition to revoke participation in a community corrections program as it does to a ruling on a petition to revoke probation. *Id*.

A probation or community corrections revocation hearing is in the nature of a civil proceeding, and the alleged violation need be proved only by a preponderance of the evidence. *Brooks v. State*, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998), *trans. denied*. When the sufficiency of the factual basis for revocation is challenged, this court neither reweighs the evidence nor judges the credibility of the witnesses. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995). Instead, we consider only the evidence that supports revocation, and we draw all reasonable inferences from that evidence. *Id.* If there is substantial evidence of probative value to support the trial court's determination that a violation has occurred, then revocation is appropriate. *Brooks*, *id.* Proof of any one violation is sufficient to revoke a defendant's participation in a community corrections program. *Id*.

Our examination of the transcript discloses that a Riverside caseworker testified about Riverside's rule against drinking alcoholic beverages. The same caseworker also testified that Ross' December 26, 2007 violation was his fourth violation of the rule. After each of the prior violations, Ross was provided with counseling, and after the second violation he was given twenty hours of extra duty and thirty days pass restriction. After the third violation, he was placed on "zero tolerance." Tr. at 38. It is clear from

this evidence that Riverside had a rule against the drinking of alcoholic beverages and that Ross, who had received counseling and various sanctions, knew of the rule. Accordingly, we conclude that Ross has failed to show lack of notice of an established Riverside rule.

Our examination of the record also reveals that Officer Brown testified that on December 26, 2007, she smelled alcohol emanating from Ross. It was this evidence, and not the alco-sensor results, that the trial court relied upon in determining that Ross' community corrections status should be revoked. Tr. at 50. The court did not err in determining that Officer Brown's testimony was sufficient to warrant revocation. Accordingly, Ross has failed to establish that the State presented insufficient evidence.

II.

Ross contends that he was denied due process under the Fifth Amendment to the United States Constitution. Specifically, he argues that the evidence presented against him was "double or triple hearsay or bore no substantial indicia of reliability." Appellant's Brief at 12. Furthermore, he argues that he was not given written notice of the claimed violations filed because the trial court considered matters outside the notice in finding the violation.

A defendant in a revocation hearing is not endowed with all the rights he possessed prior to his conviction. *Isaac v. State*, 605 N.E.2d 144, 148 (Ind. 1992), *cert. denied,* 508 U.S. 922, 112 S.Ct. 2373, 124 L.Ed.2d 278 (1993). However, there are certain due process rights which inure to the defendant at a revocation hearing. *Terrell v. State*, 886 N.E.2d 98, 100 (Ind. Ct. App. 2008), *trans. denied*. The minimum due process

rights include: (1) written notice of the claimed violations; (2) disclosure to the defendant of the evidence against him; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless good cause is shown for the suspension of confrontation); (5) a neutral and detached hearing body; and (6) a written statement by the fact-finder as to the evidence relied upon for revoking the defendant's placement. *Id*. at 100-01; *Cox*, 706 N.E.2d at 549.

As we noted above, Officer Brown gave direct testimony of her encounter with Ross on December 26, 2007. She testified that over her seventeen-year career as a Riverside Corrections Officer she became proficient at recognizing the smell of alcohol on a resident's breath. Furthermore, the caseworker testified about knowledge he acquired either from direct participation in Riverside's disciplinary process and also about knowledge that he acquired in the process of performing his official duties. There is no due process violation based upon unreliable evidence.

Furthermore, there is no indication that Ross lacked notice of the matters considered by the trial court in its determination. The "Notice of Violation of Community Corrections Rules" specifically refers to Ross' prior violations as an indication of why he was a habitual conduct rule violator and of why he was placed on "zero tolerance" status. There is no lack of notice here.[1]

[1] Ross makes reference to, but no cogent argument about, the trial court's consideration of a presentence report and the prior charges that led to his guilty plea. Ross also makes reference to, but no cogent argument about, the trial court's consideration of previous notices of violation that had been withdrawn. As noted above, the trial court based its revocation upon the testimony given at trial. Given the trial court's statement and Ross' lack of cogent argument, we see no due process violation pertaining to the presentence report, the prior charges, or the withdrawn notices.

Affirmed.

FRIEDLANDER, J., and NAJAM, J., concur.